

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2002-272-C - ORDER NO. 2003-256  
APRIL 22, 2003

|  |   |             |
|--|---|-------------|
| IN RE: Application of 3U Telecom, Inc. for a   | ) | ORDER       |
| Certificate of Public Convenience and          | ) | GRANTING    |
| Necessity to Provide Intrastate Resold         | ) | APPLICATION |
| Interexchange Telecommunications Services      | ) |             |
| and for Alternative Regulation of its Business | ) |             |
| Service Offerings.                             | ) |             |

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of 3U Telecom, Inc. ("3U" or "the Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate in South Carolina as a reseller of telecommunications services between and among locations within the State of South Carolina as a non-facilities based interexchange telecommunications service provider. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the Regulations of the Public Service Commission of South Carolina. By its Application, 3U also requested alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. 3U further requests a waiver of 26 S.C. Code Ann. Regs. 103-610 which requires the Company keep its books and records in the State of South Carolina and for a waiver from the Commissions requirement that 3U maintain its books and records in conformance with the Uniform System of Accounts (USOA). 3U requests that it alternatively be permitted

to maintain its books of accounts in accordance with Generally Accepted Accounting Principles (GAAP).

The Commission's Executive Director instructed 3U to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of 3U's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. 3U complied with this instruction and provided the Commission with proof of publication of the Notice of Filing in The State, The (Charleston) News and Courier, and The Greenville News. No Petitions to Intervene or Protests were filed.

A hearing was convened on April 9, 2003, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. 3U was represented by John J. Pringle, Jr., Esquire. Jeffrey Nelson, Staff Counsel, represented the Commission Staff.

Herve Andrieu, Vice President of 3U, appeared and testified in support of the Application. The record reveals that 3U is a Nevada corporation which is registered to conduct business in South Carolina as a foreign corporation. It is a subsidiary of 3U Telecom AG, a European long-distance company which is publicly traded on the Neuer Market in Frankfurt, Germany.

According to Mr. Andrieu, 3U is a reseller of intraLATA and interLATA intrastate telecommunications services currently authorized to provide interexchange telecommunications services in 40 states. 3U proposes to offer telecommunications services (WATS or MTS services of other carriers) to both residential and commercial

customers in South Carolina. It does not intend to offer pre-paid cards or service in South Carolina and will bill its customers directly. 3U does not intend to install any transmission or switching facilities in South Carolina. Mr. Andrieu explained the Company's request for authority and the record reveals the Company's services, operations, and marketing procedures.

Mr. Andrieu also testified regarding 3U's technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Finally, Mr. Andrieu testified that 3U will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. In this regard, he agreed to amend 3U's proposed tariff in accordance with the recommendations of the Commission staff, as detailed in the findings stated below.

Mr. Andrieu also offered that approval of 3U's application would serve the public interest by allowing customers to obtain very competitive rates and services, by promoting efficient use of the underlying network, by increasing access revenues for underlying carriers, and by increasing tax revenue for the State of South Carolina.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. 3U is organized as a corporation under the laws of the State of Nevada and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. 3U operates as a non-facilities based reseller of interexchange services and wishes to provide its services in South Carolina.

3. 3U has the experience, capability, and financial resources to provide the services as described in its Application.

4. 3U has agreed, through Mr. Andrieu's testimony, to revise its proposed tariff filed with the Commission on August 9, 2002, in the following particulars:

a. to amend Section 2.8.4 of the tariff by deleting the current language and replacing it with language stating that returned check fees will be set and collected in accordance with S.C. Code Ann. Section 34-11-70.

b. to delete Section 2.8.5, requiring a \$10.00 reconnection fee, as such fees are to be set forth in the rates section of the tariff.

c. to amend Section 2.9 by deleting the first sentence thereof regarding "credit worthiness."

d. to amend Section 2.10 by inserting a statement that the Company's billing practices will conform with Commission Rules 103-622, 103-623, and 103-625.

e. to delete Section 4.5 of the tariff regarding chargeback charges.

f. to insert within the tariff a statement that any operator services charges or surcharges will comply with the terms of Commission Order 2001-997.

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to 3U to provide intrastate interLATA service and to originate and terminate toll traffic within the same

LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, 800 inbound service, intraLATA direct dialed services or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for 3U for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. 3U shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. 3U shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a

general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

4. With respect to 3U's business service offerings, operator assistance, and customer network offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to 3U also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider. The provisions of this Order and this modification also apply to 3U.

5. If it has not already done so by the date of issuance of this Order, 3U shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. 3U is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company's resale of services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. 3U shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If 3U changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, 3U shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX inter-LATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (47 CFR 51.209). 3U shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. 3U shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, 3U shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information

can be found on the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than August 31<sup>st</sup> of each year.

11. For good cause shown, 3U is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Principles rather than the Uniform System of Accounts method.

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. 3U shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms); this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

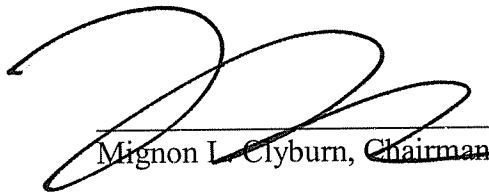
14. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.



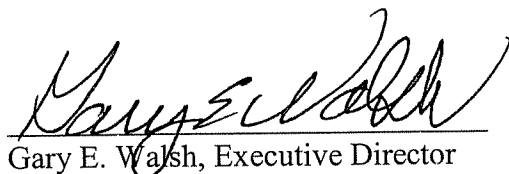
15. 3U additionally requests a waiver of Reg. 103-610, which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The record reveals that 3U's principal headquarters is located in Carson City, Nevada, and 3U requests permission to maintain its books and records at its headquarters in that city and state. The Commission finds 3U's requested waiver reasonable and understands the difficulty presented to 3U should the waiver not be granted. The Commission therefore grants the requested waiver that 3U be allowed to maintain its books and records at its principal headquarters. However, 3U shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff, and shall promptly notify the Commission if the location of its books and records changes.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
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Mignon L. Clyburn, Chairman

ATTEST:

  
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Gary E. Walsh, Executive Director

(SEAL)